

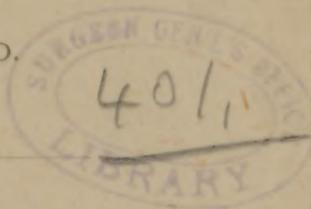
HOLTON (H.D.)

## MEDICAL LEGISLATION.

BY

HENRY D. HOLTON, A. M., M. D.,

OF BRATTLEBORO.



Read before the Vermont Medical Society at its Semi-  
Annual Meeting, July 9th and 10th, 1889.

Reprinted from Transactions of the Society.



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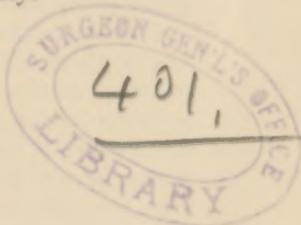
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*Mr. President and Gentlemen of the Society :*

In considering the subject of Medical Legislation, I desire to call your attention, first, to some of the reasons why it is so difficult to secure the enactment of laws relating to medical subjects, such measures being advocated by the medical profession as most desirable and even necessary to the better protection of the health of the people, or for the purpose of furthering the ends of justice in the trial of causes between man and man as well as in criminal cases.

*Secondly*, to consider briefly some subjects which require attention from our legislature.

*First*, then, regarding the causes of failure in the past to secure desired legislation. There has been, and still is, a strong feeling against what is called "class legislation," hence when a bill is presented asking for the enactment of some law relating to subjects, not generally understood, although it may seem perfectly plain to the medical man, who has given much time to the consideration of the matter, yet the fact that only members of the medical profession are asking for the passage of the bill, at once there are arrayed against it all those naturally jealous of professional men, as well as the class who in health and strength, cry "that it is not possible for any good thing to come out of the medical profession;" but when sick and suffering, insist upon the most careful, pains-taking and constant attention that it is possible for the profession to give them. This formidable opposition, crying "class legislation," is often sufficient to kill the measure; in fact, it might better be said, is *usually* sufficient to kill the bill. Again, if the bill is one of a sanitary nature, affecting in some measure enterprise in which considerable capital is invested, it is overwhelmed with objections, put with much subtlety by counsel paid to watch it until buried, while no one is paid to see that it is *not* buried, only some poor Doctor, perhaps appointed by a medical society without funds, who could only give of his time enough to launch it on its way, and then leave it to live or die by itself.

## MEDICAL LEGISLATION.

It must, however, be confessed that sometimes the impracticable enters so largely into the bill that there is nothing left for a judicious legislature to do but vote it down. We do not have to look far for the reason for this. The author of the measure having theorized upon the matter so long sees all the details of its workings with an enthusiast's eye, but does not recognize, even when his attention is called to the matter, that some of its provisions would be bad precedents; others contain paragraphs that would come more properly in regulations under the act itself, yet while they remain in it, they are a constant menace to its success, and often the immediate cause of its untimely end.

We now come to the consideration of the question, what, if any, legislation of interest to, or affecting the Medical profession, is at present demanded. We have but to recall the very interesting address given at our last annual meeting by President E. R. Campbell, on expert witnesses, to remind us that we have in this a most important subject requiring careful legislation. As a result of that address, and in accordance with a vote of this Society, a bill was prepared after consulting with some of the leading lawyers of the State, which was introduced into the House at the last session of the Legislature, and referred to the judiciary committee composed of nine lawyers, who in due time reported "that it ought not to pass," for the reason that there was not any necessity for it; that the State ought not to pay witnesses in a case unless called by the State; and furthermore, that witnesses appointed by the court—thus making them impartial—would have such weight with a jury as in many cases to practically decide the case; and lastly, that by section five it would prevent counsel from introducing medical experts of their own, whom they might find would interpret some of the facts and symptoms more favorably for their side. All these objections being fully answered, and it being further shown that eminent jurists had denounced the present method of calling experts, and had outlined the course followed by this bill as the probable remedy, the legal gentlemen of the House turned their attention to amending it, and, as a result, so loaded it down with amendments that it was engulfed and lost on the vote whether it should have its third reading. The following is the text of the bill:—

## AN ACT IN RELATION TO MEDICAL EXPERT TESTIMONY.

*It is hereby enacted by the General Assembly of the State of Vermont:*

Section 1. In any action, suit or proceeding, civil or criminal, in which the testimony of a medical expert witness is desired by either of the parties, they may, at any time before or during the trial, file with the Clerk of the Court a written request for appointment by the Judge then assigned to hold said Court, of one or more medical experts, the number never to exceed three, in the discretion of the Court.

Section 2. It shall be the duty of the Clerk of any County Court, on receiving a written request for the appointment of medical experts, to at once transmit such request to the proper Judge. Said Judge shall at once appoint a time and place where and when he will hear said request, and notify the Attorneys of the same; and at said appointed time and place, the said Judge shall hear the said Attorneys in reference to said request, and if, on hearing, the Judge deems that the interests of justice require expert testimony, he shall, as soon as may be, designate by appointment one or more medical men, learned in the science of medicine, to act as such medical experts, and shall return to the Clerk said request with his order thereon, and the Clerk shall thereupon issue a subpoena to the person or persons designated, to be served in the manner provided by law. In case said Judge shall decide that said request shall not be complied with, he shall return the request to the Clerk with a statement thereon that the request is denied.

Section 3. Any person summoned as an expert under the provisions of this act shall attend as summoned, and shall make such examination as he may deem necessary, under the direction of the Court, and in the presence of the Attorneys in said case, and shall testify as a witness under the rules and regulations of the Court; but such person shall only make such examination in the presence of the Attorneys of both parties, and shall not hear any statements in reference to the case at any other time; and if such expert shall violate this provision, he shall not be allowed to testify.

Section 4. Such witness shall be paid for his attendance, travel and services, a reasonable compensation, to be allowed by the Court, and be paid by the State.

Section 5. No medical expert witness shall be admitted to testify before any *Court or Magistrate* except as *hereinbefore provided*.

The second measure to be considered is also one introduced into the last Legislature, entitled "An Act relating to inquests on the dead, and appointing Medical Examiners." The bill was similar to the law existing in Massachusetts and several other States. This met with less opposition. It was reported favorably and its passage recommended by the committee to whom it was referred, and passed the House, but met its death in the Senate, probably because it had no one to champion its cause. The following is the text of this bill:

**AN ACT RELATING TO INQUESTS ON THE DEAD AND  
APPOINTING MEDICAL EXAMINERS.**

*It is hereby enacted by the General Assembly of the State of Vermont :*

Section 1. The Judge of the County Court in each county shall, in the month of December, appoint one able and discreet man, learned in the science of medicine, to be Medical Examiner for such county, which

appointment shall be in writing, and recorded in the office of the Clerk of the Court. Such Medical Examiner shall hold his office for five years, and until his successor is appointed.

Section 2. Medical Examiners shall make examination as hereinafter provided, upon view of the dead bodies of such persons only as are supposed to have come to their death by violence, or whose death is accompanied by circumstances of suspicious nature and its immediate cause unknown.

Section 3. Whenever a Medical Examiner has notice that there has been found or is lying within his county, the body of a person supposed to have died by violence, or whose death is accompanied by circumstances of a suspicious nature, he shall forthwith repair to such place and take charge of the same, and if, on view thereof, and a personal inquiry into the cause or the manner of the death, he deems a further examination necessary, he shall, upon being thereto authorized by the Mayor of the city or the Selectmen of the town where the body lies, in the presence of two or more discreet persons, whose attendance he may compel by subpœna if necessary, make an autopsy, and then and there reduce, or cause to be reduced to writing, every fact and circumstance tending to show the condition of the body, and the cause and manner of the death, together with the names and addresses of the said witnesses, which record he shall subscribe; before making such autopsy, he shall call the attention of the witnesses to the position and appearance of the body.

Section 4. If, on such view, personal inquest or autopsy, he shall be of the opinion that the death was caused by violence, he shall at once notify the State's Attorney of the county, or the City Attorney of the city, and a Justice of the Peace of the town in which the body lies, and shall file a duly attested copy of the record of his autopsy with such State or City Attorney, and with such Justice of the Peace, and shall also file a duly attested copy of such record with the Clerk of the County, and shall in all cases certify to the Clerk of the city or town wherein the body lies, the name and residence of the person deceased, if known, or a description of his person as fully as may be for identification, where the name and residence cannot be ascertained, together with the cause and manner in which such deceased came to his death.

Section 5. It shall be the duty of the Justice of the Peace upon such notification, immediately to hold an inquest, which may be private, in which case any and all persons, other than those required by the provision of this chapter, may be expelled from the place where the same is to be held, and said Justice may also direct the witnesses to be kept separate so that they cannot converse with each other until they have been examined. The State's Attorney, or some person directed by him, may be present and examine all the witnesses. An inquest shall also be held in case of death by accident upon any railroad, and the State's Attorney

may direct an inquest to be held in the case of any other casualty from which the death of any person may result, if in his opinion it may be expedient or necessary.

Section 6. The Justice of the Peace may issue subpoenas for the attendance of witnesses, and the persons so served shall be allowed the same fees, and their attendance compelled in the same manner, and they shall be subject to the same penalties as if served with subpoena on behalf of the State in a criminal prosecution in a County Court.

Section 7. The Justice of the Peace shall take the testimony of each witness in writing, and shall draw up and sign a report, in which he shall find and certify when, where, and by what means the person deceased came to his death, his name, if known, and all material circumstances attending his death; and if it appears that such death resulted wholly, or in part, from the unlawful act of any other person, the Justice shall state, if known to him, the name of such person whose unlawful act contributed to such death, which report, together with all testimony in writing certified by him, he shall return to the County Court next to be held in his county, together with the amount of the fees and expenses of such inquest, which, after having been duly audited by said Court, shall, on the order of said Court, be paid out of the State Treasury.

Section 8. In case of felonious killing, the Justice taking such testimony shall take the recognizance of the witnesses produced before him, for their appearance before the County Court next to be holden in such county, in such sum as he shall deem proper.

Section 9. The Medical Examiner may, if he deem it necessary, call a chemist to aid in the examination of the body or of substances supposed to have caused or contributed to the death, and such chemist shall be entitled to such compensation for his services as the Medical Examiner certifies shall be just and proper, the same being audited and allowed in the manner hereinafter provided.

Section 10. There shall be allowed to a Medical Examiner for any service by him performed under this act, such sums as shall be allowed to him by the County Court, to be paid by the County Clerk upon the allowance of the Court, and to be allowed to the Clerk in the settlement of his accounts with the State.

Section 11. Sections 3,934, 3,935, 3,936 and 3,937 of the Revised Laws are hereby repealed.

Another, and the last subject to which your attention is to be called by this paper, is one upon which the profession throughout the country are practically united, and which finds frequent and favorable mention in the Medical Journals of the day, and which has been formulated and become law in four or five States of the Union. Reference is here made to a thorough regulation and licensing of practitioners of medicine and

surgery, by a Board of State Examiners. At the last meeting of the American Social Science Association a resolution was adopted asking "that the American Medical Association appoint a committee to consider the importance of a more thorough education of physicians for entering upon their medical studies, and of a more thorough regulation of the medical curriculum, and of placing of medical colleges under State supervision." At the last meeting of the American Medical Association the section on State Medicine recommended the adoption of a resolution asking for uniformity in State Medical Legislation, that a thorough preliminary examination, three courses of lectures, and an examination by the Board issuing a license, be required; the license to practice be recorded in the office of the County Clerk, and that the licensing board be endowed with power to revoke a license on account of immoral conduct. This resolution, as well as the one from the Social Science Association, was adopted unanimously by the American Medical Association at its general meeting, Thursday, June 27. These expressions upon this subject, without consultation, by bodies of the character of these, and representing so intelligent and wide-spread a constituency, shows that not only a few medical men, but the vast body of learned and scientific men of the country, are earnestly agreed that reform in this matter must be sought. Of the numerous editorials and articles from correspondents which have appeared in the prominent Medical Journals of the country in the past few months, the following, expressing as it does, the convictions which, after considerable study of the subject, have forced themselves upon my mind, will bear quoting in full.

The Medical Record says: "There can be no doubt that the feeling among the profession of this country in favor of enforcing by law, if necessary, a higher standard of medical education is rapidly growing. It is seen in the constant reference to the subject at the meetings of medical societies and in our current journals.

The fight is between some 120 medical colleges and the thousand "professors" attached thereto on the one hand, and the medical profession at large, on the other. The professors have had the advantage heretofore, because they have made it their special business to kill all obnoxious legislation, while the general practitioner, having no particular and immediate interest to defend, has let matters go on as they were. Those who, like ourselves, have been contending for higher medical standards and removal of the licensing power from the men who confer medical degrees at \$30 per head, are annually helped by the statistical and other work of Dr. John H. Rauch, of Illinois. It is well to confront our readers and the public often with the figures regarding our medical men and medical institutions. There are now in the United States about 115,000

doctors, or one to every 533.33 inhabitants. In 1880 the ratio was one to 601.12; the oft quoted ratios of other countries are as follows:

Russia (in Europe).....	16:100,000
France.....	29:100,000
Germany.....	32:100,000
Austria.....	34:100,000
United Kingdom.....	61:100,000
United States.....	187:100,000

We have in this country 118 medical colleges, and the ratio of Medical schools to population in this and other countries is as follows:

Austria.....	1:6,032,421
Belgium.....	1:1,384,163
Denmark.....	1:1,969,039
France.....	1:4,513,223
Germany.....	1:2,350,000
Italy.....	1:1,353,671
Japan.....	1:1,716,920
Norway.....	1:1,800,500
Mexico.....	1:1,100,890
Netherlands.....	1:1,015,142
Portugal.....	1:1,449,517
Russia (in Europe).....	1:8,750,000
Spain.....	1:1,662,586
Sweden.....	1:1,526,300
Switzerland.....	1:848,700
United Kingdom.....	1:844,846
United States.....	1:518,846

With such competition among schools, and with their existence dependent upon matriculants, it is impossible that stringent requirements for the graduation should be called for. Doubtless if matters were left to take care of themselves, there would in time arise a general demand among the public for graduates of the best class of institutions. But the "supply and demand" argument is not entirely adequate. There will always be a majority of people quite incapable of judging as to the qual-

ties of a safe and wise physician. They buy the goods most obtrusively thrust at them. For the protection of the public health, and for securing the greatest good to the greatest number, it is necessary to regulate the medical supply by some artificial means.

State Boards of Licensers and Examiners, with powers to prescribe the qualifications both of those who wish to become medical students and of those who wish to become physicians, appear to furnish the best available means for promoting this end at present attainable. The work of some such a Board as that in Illinois, as shown in the table, offers assurance of the utility of the method,—comparison of the total number and classes of physicians in practice in Illinois July 1, 1877, and July 1, 1887.

	July 1, 1877.	July 1, 1887.
Number engaged in practice .....	7,400	6,180
Graduates and licentiates.....	3,600	5,704
Non-graduates.....	3,800	476
Per cent. of graduates and licentiates....	48.6	92.3
Percentage of non-graduates.....	51.4	7.7

In the Journal of the American Medical Association, the editor says : “The only legitimate object for the enactment of State laws regulating the education and practice of medical men, is to secure an educated and skillful profession, and thereby protect the people from the disastrous effects of ignorance and imposition. To secure this most desirable object laws must be so framed as to require every person proposing to study and practice medicine to have, first, a good knowledge of the elementary branches of literature, mathematics, physics and the natural sciences, with the mental discipline that such a degree of general education necessarily develops; second, the devotion of three years to the diligent study of the several branches of medical science and art, at least six months of each year to be spent in a medical college of recognized good standing, and during the second and third years, the college attendance must include clinical instruction in a public hospital, containing a daily average of not less than fifty patients. Third, the appointment of a competent State Board of Medical Examiners, charged with the duty of examining such persons as propose to commence the study of medicine, and grant certificates to those found qualified and register them as students, and also the duty to thoroughly examine all applicants for license to practice medicine and surgery in the State, and to issue licenses to those who are found qualified by the possession of a practical knowledge of all the recognized branches of medical science and art, and of good moral character. These three items must be essential parts of every law that can be executed in such a manner as to eliminate ignorance and imposition from medical practice, and afford the highest degree of protection to the public and individual health.”

The same Journal formulates the following bill as comprising these general features, and as an aid to legislatures in framing the necessary laws.

**AN ACT TO REGULATE MEDICAL EDUCATION AND THE PRACTICE OF MEDICINE AND SURGERY, AND TO PUNISH PERSONS VIOLATING THE PROVISIONS THEREOF.**

*Be it enacted by the Legislature of the State of —*

Section 1. A Board, to be known as "The State Board of Medical Examiners," shall be appointed by the Governor, subject to the approval of the Senate, consisting of nine members, whose duty it shall be to examine all applicants for registration as students of medicine, and to examine fully all persons applying for license to practice medicine and surgery in this State. The appointees must be members of the medical profession of recognized ability and honor, and residents of the State not less than five years; but no member of any college or university having a medical department, shall be appointed to serve as a member of said Board. The term of office of the members of said Board shall be three years, and until their successors are appointed, provided, however, that the first appointees shall be divided into three classes, of three members in each class, the term of service of the first class shall expire in one year, and that of the second in two years, and that of the third in three years from the date of their appointment.

Section 2. Said Board of Medical Examiners shall elect a President, a Secretary, and a Treasurer. It shall have a common seal, and the President and Secretary shall be empowered to administer oaths in taking testimony upon any matter pertaining to the duties of said Board. Said Board shall hold meetings for examination at the Capitol buildings of the State, the first Tuesday of January, April, July and October of each year, and at such other times and places as the Board shall deem expedient. Said Board shall keep an official record of all its meetings, also an official register of all applicants for examination for a certificate as a medical student, or a license to practice medicine and surgery in this State. Said register for certificate or license shall show the name, age and time, he or she may have spent in both preparatory and medical study, together with the name and location of all colleges which have granted degrees or certificates of attendance upon lectures in medicine. Said register shall show whether such applicant was rejected or licensed under this act. Said register shall be prima facie evidence of all matters therein contained.

Section 3. All persons hereafter intending to commence the study of medicine in this State, shall apply to the said Board of Medical Examiners for an examination and certificate of registration as students of medicine and surgery. It shall be the duty of said Board to personally examine all such applicants in the following branches of general educa-

tion, viz: English grammar, composition, geography, civil history, arithmetic and algebra, physics, and all the natural sciences, and at least one of the following languages, Latin, French, or German, and shall give certificates only to those whose examinations are satisfactory to the Board. And no person shall be credited for any part of the legal period of his medical studies prior to the date of his certificate of preliminary examination. All persons hereafter commencing the practice of medicine or surgery in any of its branches in this State, shall apply to said Board for license so to do. Applicants for examination shall be divided into three classes, to-wit: Persons graduated from legally chartered medical schools not less than five years before the date of application for a license; second, all other persons graduated from a legally chartered medical school, and third, medical students taking a regular course of medical instruction. Applicants of the first class shall submit to examination upon the following named branches, to-wit: materia medica and therapeutics, obstetrics and gynecology, practice of medicine, surgery and surgical anatomy. Those of the second and third classes shall submit to examinations upon anatomy, physiology, chemistry, materia medica and therapeutics, histology, pathology, hygiene, practice of medicine, surgery, obstetrics, gynecology, diseases of the eye and ear, medical jurisprudence, and such other branches as the Board may deem advisable. The questions for examination of applicants of the first and second classes shall be the same in branches common to both. Said Board shall not license graduates of a date later than January 1st, 1891, until satisfactory proof is furnished that the applicant has studied medicine and surgery at least three years after registration as a medical student after graduation; attended at least three annual courses of medical lectures of not less than six months duration each, including attendance upon hospital clinical instruction during the second and third course, is of good moral character, and not less than 21 years of age. Applicants of the third class, upon completion of two full courses of lectures, of not less than six months duration each, can be examined upon the following branches, to-wit: anatomy, physiology, chemistry, histology, pathology, materia medica, and therapeutics. If said examination is satisfactory, it may issue a certificate that the applicant has passed a final examination in these branches. All examinations shall be both scientific and practical, but of sufficient severity to test the candidate's fitness to practice medicine and surgery.

Section 4. All examinations shall be in writing, unless otherwise requested by the applicant. In oral examinations the questions and answers must be of a fundamental character, and such as can be answered in common by all students of medicine. When desired, said examination may be conducted in the presence of the Dean of any medical college,

or the President of any Medical Society in this State. If said examination is satisfactory, the Board shall issue a license entitling the applicant to practice medicine in this State. The votes of all the examiners shall be yes or no, and written with their signatures, upon the backs of the examination papers of each candidate for the respective branches. A license shall not be issued unless the applicant has passed a satisfactory examination on at least three fourths of the branches required by this act. Said examination papers shall be kept on file by the Secretary of said Board, and shall be prima facie evidence of all matters therein contained. All licenses shall be signed by the President and Secretary of the Board, and attested by the seal thereof. The fee for examination shall be fifteen dollars for each applicant of the first and second classes, and twenty dollars for each applicant of the third class, and a fee of five dollars shall be charged for each examination in preliminary education. It shall be paid to the Treasurer of the Board, and applied towards defraying the expenses thereof.

Section 5. The Board may, by a unanimous vote, refuse to grant or may revoke a license, for the following causes, to wit: Chronic and persistent insanity, the practice of criminal abortion, or for the publicly advertising special ability to cure diseases that, in the opinion of said Board it is impossible to cure. In complaints for violating the provisions of this section, the accused person shall be furnished a copy of the complaint and given a hearing before said Board, in person or by attorney, and an appeal may be taken from the decision of said Board, to the appointing power thereof.

Section 6. The person so receiving said license shall file the same, or a certified copy thereof, with the Clerk of the County Court, in and for the county in which he or she resides, and said Clerk of the Court shall file said certificate, or copy thereof, and enter a memorandum thereof giving the date of such license, and the name of the person to whom the same is issued, and the date of said filing, in a book to be provided and kept for that purpose, and said Clerk of the Court shall each year furnish to the Secretary of the Board a list of all certificates on file at his office, and upon notice to him of the change of location or death of a person so licensed, or of the revocation of a license granted to such person, said Clerk shall enter at the appropriate place in the record so kept by him, a memorandum of said fact, so that the record so kept by said Clerk of the Court shall correspond with the records of said Board so kept by the Secretary thereof. In case a person so licensed shall move into another county of this State, he or she shall procure from the Clerk of the Court a certified copy of said license, for which no charge shall be made, and shall file the same with the Clerk of the County Court in the county to which he or she shall remove. Said Clerk shall file and enter the same with like effect as if the same was the original license.

## MEDICAL LEGISLATION.

Section 7. This act shall not apply to commissioned surgeons of the United States Army or Navy, to physicians or surgeons in actual consultation from other States or Territories, or to actual medical students practicing under the direct supervision of a Preceptor.

Section 8. Any person shall be regarded as practicing medicine or surgery within the meaning of this Act, who shall append the letters M. D. or M. B., to his or her name, or repeatedly prescribe or direct for the use of any person or persons any drug or medicine, or other agency for the treatment, relief or cure of any bodily injury, infirmity or disease.

Section 9. Any person practicing medicine or surgery in this State, without first having obtained the license herein provided for, or contrary to the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than \$50, or more than \$100, or by imprisonment in the county jail for a period of not less than ten or more than ninety days, or both fine and imprisonment. Justices of the Peace, and the respective Municipal Judges shall have jurisdiction of violations of the provisions of this Act. It shall be the duty of the respective county attorneys to prosecute violations of the provisions of this Act.

Section 10. All Acts or parts of Acts now existing not in accordance with the provisions of this Act are hereby repealed.

Section 11. This Act shall take effect and be in force from and after its passage.

That any of these measures shall become laws it will be necessary that the medical profession shall, by personal effort and through the press of the State, present to the people why it is asked that these principles should be incorporated in the laws of the State. When public opinion becomes educated and enlightened, as has that of the medical profession, then, and not till then, shall we see the work accomplished. Go, then, and preach this gospel of reform in each of your towns.







